

**FLATHEAD COUNTY BOARD OF ADJUSTMENT
MINUTES OF THE MEETING
JUNE 04, 2019**

**CALL TO ORDER
6:03 PM**

A meeting of the Flathead County Board of Adjustment was called to order at approximately 6:00 p.m. at the South Campus Building, 40 11th Street West, Suite 200, Kalispell, Montana. Board members present were Ole Netteberg, Cal Dyck, Tobias Leichti, and Roger Noble. Gina Klempel had an excused absence. Rachel Ezell and Mark Mussman represented the Flathead County Planning & Zoning Office.

There were 7 members of the public in attendance.

**APPROVAL OF
MINUTES
6:04 PM**

Noble motioned, seconded by Liechti, to approve the May 07, 2019 minutes as written.

On a roll call vote the motion passed unanimously.

**PUBLIC
COMMENT
*(Public matters that
are within the
jurisdiction of the
Board 2-3-103
M.C.A)*
6:04 PM**

None

**DISCLOSURE OF
CONFLICT OF
INTERESTS
6:05 PM**

None

**SCOTT &
BERNADETTE
KING
(FZV-19-01)
6:05 PM**

A request from Scott & Bernadette King for a variance to Section 3.16.040(3) & (4) of the Flathead County Zoning Regulations (FCZR), which state the minimum front yard setback in the RC-1 zoning is 20 feet and the maximum height for a principal structure is 35 feet. The applicant would like to reduce the front setback from 20 feet to 5 feet and build higher than 35 feet from adjacent grade in order to build a home on property located at 27 Ponderosa Lane, Bigfork, MT within the Bigfork Zoning District. The property is currently RC-1 (Residential Cluster) and contains approximately 0.3 acres.

STAFF REPORT
6:06 PM

Ezell reviewed the Staff Report FZV-19-01 for the board.

**BOARD
QUESTIONS**
6:10 PM

None

**APPLICANT
PRESENTATION**
6:10 PM

Tim Calaway, Calaway Construction, 365 Riverbend Road, Bigfork Montana, represented the applicants. He stated he had been building in the valley since 1976, served 11 years on the Flathead County Planning Board and 15 years on the Bigfork Land Use Advisory Committee (BLUAC). He commented that he is familiar with the issues the board members face and said he would like to apologize as this application is unique in itself. He said the lot is steep and they designed according to that. All the other houses on that side of the road are set back five feet. When he confronted the planning office about that and they went back and researched it, they didn't find that there were any variances granted for those other three houses on that side of the road. Something or somebody allowed the five foot setback on that side of the road, it's already established on that road and they are not asking for anything greater. He spoke about the access to the lot and said the driveway would be at an 18 percent slope. He also said there is plenty of room for snow plowing because they've been doing it for years, the houses have been there a long time. He spoke to the comments from the Homeowner's Association saying they couldn't have driven up there because they would have seen the other homes are only set back 5 feet. He reiterated they were not asking for anything the neighbors didn't already have or that hasn't already been allowed. He spoke about how they came up with the design and some of the obstacles they ran into and also said they would not be obstructing anybody's view.

**BOARD
QUESTIONS**
6:16 PM

None

**PUBLIC
COMMENT**
6:17 PM

Susan Johnson, 474 Electric Avenue, Bigfork, Montana stated she had seen the lot and commented that the three houses that were there were probably built prior to the setback requirement that came into effect back in 1984. She felt that was something to consider. She pointed out on the drawings the parking level looking east and said there was another map that showed the cars coming further north and have the cars facing south. She commented it would be a greater cost for the applicants to adhere to the 20 foot setback and she understood that. She questioned whether any of the drawings for the structure had been given to the Homeowner's Association for their review. She said the CC&R's state there is

a committee that reviews any structures that would be built on the lot. She didn't see where that was done and was curious why that wasn't done. As far as the 35 foot height restriction, that is for the chimney, but there have been numerous requests for extending beyond the 35 feet in the Bigfork Zoning District. To her knowledge those have not been approved on any residential houses. She felt if they open that up then other people will come in and want to go beyond the 35 feet.

Jerry Turley, 187 Eagle Bend Drive, stated he is part of the Eagle Bend Architectural Committee and said they did not get anything to review. He felt the topographic survey doesn't have a lot of detail that helps him make his decision. He understands the problem the builders will have building a house on this property. As far as the steepness of the driveway, there are several driveways that are much steeper. He commented he couldn't tell where the property lines were and spoke about the different easements. He felt keeping the 20 foot setback is paramount to avoid damage to utilities. He hadn't reviewed the roofline but it would come under review if they get a set of working plans. Other impacts include the dead end on that street not being wide, it's only 20 feet wide. He spoke about the setback and commented that the Homeowner's Association is opposed to changing setbacks in general because it will open up a can of worms down the road.

**APPLICANT
REBUTTAL
6:25 PM**

Calaway said he is familiar with all the opposition and he sympathizes. This lot should never have been sold or allowed to be subdivided. It was not these peoples' decision to make that road. Yes, they could move the house down the hill and have the driveway coming in from the north and it would be steep. He spoke about some of the neighbors' homes and how they access them and also the road conditions that could be a deterrent. He stated that he knows everybody's opposition to change anything that's in the regulations, he's been there while he was on the planning board and he understands opposition to any changes. He reiterated he was not asking for anything that's not already been allowed. As far as the setbacks, they had all the utilities located and everything is okay. The sewer and water are stubbed in so they won't have to dig up utilities. The house is only 24 feet wide to fit on the lot. As far as not getting to the Eagle Bend Homeowner's Association, he never does that until the plans are all drawn and they go through any easements or adjustments that they have to do. He was trying to simplify the process because he felt the committee would say he needed to go through the variance process before they would approve anything. He commented that it doesn't matter when the 20 foot setback was established because the other houses are already at a 5 foot setback. He said he sympathizes with the board having to make this decision and appreciated their efforts.

**STAFF
REBUTTAL
6:29 PM**

None.

**BOARD
DISCUSSION
6:30 PM**

Mussman commented that the over height appeared to be just for the chimney and in Section 3.03.020(6) of the zoning regulations it states several types of structures or structural parts are not subject to the building height limitation of the regulations and it includes chimneys. Essentially, the applicants are only asking for a variance to the minimum setback requirements.

Noble said he looked at the property and it is steep. He pointed out on the map how the topography contours are evenly spaced and has a continuous grade all through that area until you get down to the east end of the property where it really drops off. He noticed the house to the south is at 5 ft. It's pretty clear the rules went into effect in 1984 and all the other houses were built in 1986 according to the staff report. He didn't know when the King's bought this lot but he assumed it was after 1984 since they knowingly bought the lot knowing what the limitations were. He didn't have any sympathy in that respect. He felt some of the renditions could have been a little clearer, especially the south elevation contours. When he visited the site it looked to him like the house across street had a deck out back with a view of the Swan Range and he was sure their view may be impeded somewhat by this house. He had a similar situation that he didn't appreciate and he could empathize with this. The 35 feet height restriction was beyond the boards' control, the main thing was the 5 foot setback versus the 20 foot requirement. He disagreed with item 'F' in the staff report he felt that granting the variance would potentially affect the neighbors. He also disagreed with item 'G' in the staff report stating the minimum variance would not alleviate the hardship, he would like to see Eagle Bend Homeowner's Association Architectural Committee review this and also BLUAC to see if there is some potential to move it a little further, maybe 15 feet from the road. He said the board has had variances come to them before and he recalls one in 2015 that he had staff look up the minutes for, FZV-14-03, was a similar situation in setbacks and more relative to height. The Board tabled it and allowed the applicant to come back with additional information and when they came back they didn't come back with information that was adequate so the Board denied it. He felt the precedence had been set as far as his perspective.

Netteberg commented that this type of issue was one of the main reasons he got interested in the Board of Adjustments. He gave a brief history of how he became involved. He stated he likes the word 'common sense'. He felt the situation was that when a person looks down the street and all the houses are at a 5 foot setback, why would one more make a difference. That's the reason he likes the words Board of Adjustment, because they can adjust that.

Leichti agreed with Netteberg stating it's not exactly 'after the fact zoning' but the subdivision is already developed, the houses are already put in and now we

have a 20 foot setback. Approving this would not have any detriment to the neighborhood and he didn't have a problem with it.

Dyck was concerned because of the CC&R's and the Homeowner's Association and the responsibilities that were put into that community. He would have liked to see a compromise that would have been agreed to between the homeowner and the Homeowner's Association. He wanted to be extremely careful as the Board of Adjustment as his concern was if there was an organization and a body of people that agreed to specific rules and regulations, although the other side of that is when there are homes in that one community and they are only 5-6 feet off the edge of the road, then asking someone else to be another 15 feet farther back creates something like why do we change the rules half way through. He would like to see this go back to the Architectural Committee and with the homeowner come up with a compromise that would work between both. Maybe not a 20 foot setback, but the other part is the utility side of it. He spoke about his concern regarding utilities. The map wasn't clear as to exactly where the utilities are and where they are in relation to the side of the asphalt as compared to the 40 foot right-of-way. There is a 12 foot easement in that area but they have to make sure they still have the room they need to make everything work. He is kind of in the middle. He sees both sides. He was disappointed that BLUAC didn't meet because they did not have a quorum. It would have been very helpful if the Board would have had their input. The Architectural Committee and the Homeowner's Association do have responsibilities and he didn't want to usurp that as a Board of Adjustment. Unless there were something that was grievously strange. Because then all of a sudden we are setting a precedence as another applicant can come in and say they don't agree with the Homeowner's Association and all of a sudden we've stripped the authority and he wanted to be very careful of that. This is about community. The Board of Adjustment addresses issues that don't fit quite well. He understands this is a steep piece of property and the applicant is stating no one else in the area has the 20 foot setback so they need to come up with a compromise. He also disagreed with item 'G' of the staff report because maybe if they were to move it 10 feet or 12 feet then that's a compromise between the extremely steep structure on a very steep slope and also that community where everyone else is only 5 to 7 feet off the road. He would also like to see an agreement with the Homeowner's Association before they move forward.

Mussman said the Board needed to keep in mind that they deal with the regulations. The county is not a party to the Homeowner's Association or their Architecture Review Committee. He had concerns in listening to the Board discussion that they were going to put responsibility on the Homeowner's Association to help them make the decision. That should not be the case. When they read through the required findings they need to make, whether it's a 5 foot setback or anything under 20 feet, they have to make these findings. If they can make these findings then have this go before the Architectural Review Committee, the applicant can say the Board of Adjustment approved this variance and here's what the house looks like. The applicant will deal with the

architectural design of the house no matter what the setback is. It sounds like the Board was passing on a little bit of the responsibility to make a decision to a group of individuals that make sure the style of the house fits into the neighborhood. The county is not a party to any kind of subdivision covenants whatsoever and it sounds like we are trying to make them help the Board make a decision. He said the Board could say a 10 foot setback is the minimum variance which will alleviate the hardship or they could ask the applicant to come back with some better drawings stating what the minimum would be for the applicant to build an affordable house for the client. We know 20 feet is too much and it appears 5 feet might be too little. The Board could make that decision tonight, make it 7 ½ or make it 10 or 11 feet 3 inches. Or they can ask for additional information such as the last variance for Eagle Bend. As he recalls (although he wasn't here) that was more of a height issue.

Dyck stated that he doesn't want to be seen that they don't respect or honor different communities. That's his number one goal with the understanding they have the regulations that they have to work through.

Mussman said it has the appearance that the Board wants to utilize the private Homeowner's Association to help them make their decision. They can either make positive findings of fact or not, regardless of what the Homeowner's Association or Architectural Review Committee might say. Conversely, they could have all the members of the Architectural Review Committee come in and say they are all for this and the Board could decide they can't make the necessary positive findings. Just something to keep in mind.

Noble commented that he doesn't think the Board is looking for the Architectural Review Committee to help make a decision, he felt they were looking for input from them as to how this fits within their framework. He would have liked to have seen them and BLUAC provide some comments on it. He spoke about the lots and homes that are there and the topography. He doesn't believe the whole steepness he thought it flattened out a little bit. He goes back to the fact those were all grandfathered in. The Kings bought this lot knowing what they were buying and knowing what the limitations were. He was willing to see what they came up with, a little bit of a compromise. He would like to table it so the applicant can provide some additional input.

**MOTION TO
TABLE
(FZV-19-01)
6:48 PM**

Noble made a motion, seconded by Dyck, to table Staff Report FZV-19-01 until the July 2, 2019 meeting.

**BOARD
DISCUSSION
6:48 PM**

Netteberg didn't have any problems with the findings of fact.

Liechti stated he didn't see any problems. He felt the 5 foot setback was fine but if the Homeowner's Association and the applicant come up with a compromise he didn't think the Board ruling would overrule the Homeowner's Association or the covenants.

Mussman commented that it sounded like it would be a 2-2 vote. The motion to table for further information will not succeed. If the Board made another motion to adopt the findings of fact and make a decision on the request, it appears it could be a 2-2 vote as well which would be a denial. The motion to table would be unsuccessful and the motion to approve would be unsuccessful. In essence, the request would be denied and the applicant can't bring in another request unless there are material changes in the facts. He wasn't arguing one way or another he was just letting both sides know that. Maybe one side or the other, one of the members could modify their thinking just a bit and either review it again next month or approve it.

**ROLL CALL TO
TABLE
(FZV-19-01)
6:52 PM**

The motion passed unanimously on a roll call vote.

**BOARD
DISCUSSION
6:53 PM**

None

**NEW BUSINESS
6:53 PM**


Mussman asked the Board members if they would be able to attend the July 2, 2019 meeting. Dyck said he could not make it. Noble said he didn't know at this time. Mussman said it looks like one of the items will be this item and they do have two appeals and a conditional use permit.

**OLD BUSINESS
6:53 PM**

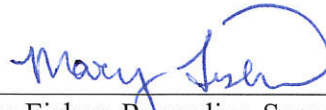
None

**ADJOURNMENT
6:54 PM**

The meeting was adjourned at approximately 6:54 pm on a motion by Dyck. The next meeting will be held at 6:00 pm on July 2, 2019.



Gina Klempel for Cal Dyck, Chairman



Mary Fisher, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED 8/6/2019